

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EDUARD ZAVALUNOV,	:	Civil No. 3:18-cv-2152
	:	
Petitioner	:	(Judge Mariani)
	:	
v.	:	
	:	
WARDEN DOUGLAS K. WHITE,	:	
	:	
Respondent	:	

**MEMORANDUM**

**I. Background**

On November 7, 2018, Petitioner Eduard Zavalunov (“Zavalunov”), an inmate confined at the Allenwood Low Federal Correctional Institution, in White Deer, Pennsylvania, filed a verified complaint and/or petition for writ of habeas corpus. (Doc. 1). Named as Respondents are Warden White, the Federal Bureau of Prisons, and John Doe #1, Current Director of Immigration and Customs Enforcement (“ICE”). (*Id.*). Zavalunov submitted the \$5.00 filing fee for a petition for writ of habeas corpus, and an application for leave to proceed *in forma pauperis* for a petition for writ of habeas corpus (AO 240 Short Form). (See Docket Entry dated November 16, 2018; Doc. 4). Accordingly, this case was docketed and opened as a 28 U.S.C. § 2241 habeas action.

Previously by Order dated November 19, 2018, the Court construed Zavalunov’s verified complaint and/or petition for writ of habeas corpus as a habeas petition, and dismissed the Federal Bureau of Prisons and John Doe #1, Current Director of Immigration

and Customs Enforcement, and Ordered service of the petition. (Doc. 6). Zavalunov subsequently indicated that this action includes habeas claims, as well as civil rights claims. (Doc. 7). Respondent likewise contends that this action alleges more than habeas claims, and requests that the Court construe the petition as a complaint. (Doc. 12). Respondent has thus moved for reconsideration of the Court's November 19, 2018 Order. (Doc. 11). For the reasons set forth below, the Court will grant the motion in part.

## **II. Motion for Reconsideration Standard of Review**

A motion for reconsideration is a device of limited utility. It may be used only to seek remediation for manifest errors of law or fact or to present newly discovered evidence which, if discovered previously, might have affected the court's decision. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906 (3d Cir. 1985), *cert. denied*, 476 U.S. 1171 (1986). Accordingly, a party seeking reconsideration must demonstrate at least one of the following grounds prior to the court altering, or amending, a standing judgment: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. *Max's Seafood Café v. Quineros*, 176 F.3d 669, 677 (3d Cir. 1999), *citing North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995).

A motion for reconsideration is appropriate in instances where the court has “. . . misunderstood a party, or has made a decision outside the adversarial issues presented to

the Court by the parties, or has made an error not of reasoning but of apprehension.”

*Rohrbach v. AT & T Nassau Metals Corp.*, 902 F. Supp. 523, 527 (M.D. Pa. 1995), *vacated in part on other grounds on reconsideration* 915 F. Supp. 712 (M.D. Pa. 1996), *quoting Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983). It may not be used as a means to reargue unsuccessful theories, or argue new facts or issues that were not presented to the court in the context of the matter previously decided.

*Drysdale v. Woerth*, 153 F. Supp. 2d 678, 682 (E.D. Pa. 2001). “Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly.” *Continental Casualty Co. v. Diversified Indus. Inc.*, 884 F. Supp. 937, 943 (E.D. Pa. 1995).

### **III. Discussion**

In the instant motion, Respondent requests that the Court reconsider its November 19, 2018 Order, amend the Order, construe the petition as a complaint, Order Zavalnuov to pay the entire filing fee or move for *in forma pauperis* status, and Order service of the complaint. (Doc. 12).

A habeas petition may be brought by a prisoner who seeks to challenge either the fact or duration of his confinement. *Preiser v. Rodriguez*, 411 U.S. 45, 494 (1973); *Tedford v. Hepting*, 990 F.2d 745, 748 (3d Cir. 1993). “Habeas relief is clearly quite limited: ‘The underlying purpose of proceedings under the ‘Great Writ’ of habeas corpus has traditionally

been to ‘inquire into the legality of the detention, and the only judicial relief authorized was the discharge of the prisoner or his admission to bail, and that only if his detention were found to be unlawful.’” *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002) (quoting *Powers of Congress and the Court Regarding the Availability and Scope of Review*, 114 Harv.L.Rev. 1551, 1553 (2001)). However, when seeking to impose liability due to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, the appropriate remedy is a civil rights action. See *Leamer*, 288 F.3d at 540. “Habeas corpus is not an appropriate or available federal remedy.” *Linnen v. Armainis*, 991 F.2d 1102, 1109 (3d Cir. 1993).

Zavalunov alleges that the BOP improperly placed detainees on individuals without the proper documents provided by ICE; ICE improperly issued a detainer in violation of the Administrative Procedures Act, and the Fourth and Fifth Amendments; the BOP improperly refers inmates to ICE based solely on national origin in violation of the Fourteenth Amendment; ICE improperly places detainees on inmates based solely on national origin in violation of the Fourteenth Amendment; the issuance of a detainer constitutes custody for purposes of § 2241; and, he has a statutory right to be considered for placement in a Residential Reentry Center. (Doc. 1). Zavalunov seeks appointment of counsel, declaratory and injunctive relief, attorney’s fees and costs, and any other relief deemed just and proper. (Doc. 1, pp. 18-19).

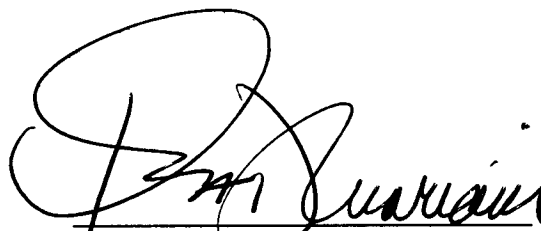
Careful review of the petition reveals that, because Zavalunov is seeking to impose liability due to the deprivation of certain rights and privileges, the appropriate remedy is a civil rights action. Consequently, the motion for reconsideration will be granted to the extent that the appropriate remedy for Zavalunov's claims is a civil rights action. The petition will be dismissed without prejudice to any right Zavalunov may have to reassert his present claims in a properly filed civil rights complaint.

#### **IV. Conclusion**

Based on the foregoing, Respondent's motion (Doc. 11) for reconsideration will be granted in part.

A separate Order shall issue.

Date: December 6, 2018

A handwritten signature in black ink, appearing to read "Robert D. Mariani", written over a horizontal line.

Robert D. Mariani  
United States District Judge